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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 2, 2013

10:11 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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(CC: Doc# 4832) Motion for Objection to Claim(s) Number: 1360,
1361.

(CC: Doc# 4903) Omnibus Motion for Omnibus Objection to
Claim(s)/Debtors' Thirty-Second Omnibus Objection to Claims
(Duplicative of Indenture Trustee Claims).

(CC: Doc# 4635) Motion for Objection to Claim(s)/Debtors'
Objection to Proofs of Claim

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1 P R O C E E D I N G S

2 THE COURT: All right, we're here in Residential
3 Capital, number 12-12020.

4 Ms. Richards?

5 MS. RICHARDS: Good morning, Your Honor. Erica
6 Richards of Morrison & Foerster, appearing on behalf of the
7 debtors.

8 Your Honor, the debtors filed an amended agenda
9 yesterday. Do you have a copy of that?

10 THE COURT: The crowd dwindles, doesn't it?

11 MS. RICHARDS: The first two items on the agenda are
12 both adjourned. And the first contested item starts on page 4,
13 and that is the debtors' objection to proofs of claim filed by
14 Robert Sweeting against GMAC Mortgage. It was filed at docket
15 number 4832.

16 Also appearing in this matter for the debtors is
17 Jonathan Dykstra of Severson & Werson, who represents GMAC
18 Mortgage in litigation brought by Mr. Sweeting in California.
19 I think a pro hac application is pending before the Court for
20 Mr. --

21 THE COURT: Okay.

22 MS. RICHARDS: -- Dykstra.

23 THE COURT: All right. Mr. Sweeting, are you on the
24 phone?

25 MR. SWEETING: Yes, I am, Your Honor.

1 THE COURT: All right. Go ahead, Ms. Richards.

2 MS. RICHARDS: And I would also note, Your Honor, also
3 present in the courtroom is Ms. Delehey, who's in-house
4 litigation counsel for GMAC, and who submitted a declaration in
5 support of their objection.

6 THE COURT: Thank you.

7 MS. RICHARDS: Your Honor, Mr. Sweeting filed two
8 proofs of claim, aggregating nearly 160 million dollars against
9 GMAC Mortgage. Those claims are assigned claim numbers 1360
10 and 1361. With the Court's permission, I'd like to address our
11 objection to claim number 1360 first.

12 THE COURT: Sure, go ahead.

13 MS. RICHARDS: Claim 1360, which was filed in the
14 amount of 79,170,000, asserts claims that were first brought by
15 Mr. Sweeting in an action commenced on March 20th, 2008 in
16 California Superior Court. The debtor's objection refers to
17 that case as the first Sweeting action.

18 The California trial court evaluated the merits in Mr.
19 Sweeting's claims against GMAC and determined that they lacked
20 merit. It dismissed -- or sorry, excuse me -- it granted
21 GMAC's demur as to certain of the claims in that complaint and
22 then granted GMAC's motion for summary judgment as to any
23 remaining claims on that complaint.

24 That judgment is final, and the time to appeal it is
25 well past. Under California law --

1 THE COURT: It was appealed; the appeal was dismissed.

2 MS. RICHARDS: It was appealed, and the appeal was
3 dismissed, correct. There was also -- he filed a second
4 complaint, and the time to appeal that complaint has also
5 expired.

6 Under California law, res judicata, as it does in
7 pretty much all jurisdictions, applies where three elements
8 have been met: The prior litigation resulted in a final
9 judgment on the merits; privity exists between the parties in
10 the prior litigation and the subsequent litigation; and the
11 present action or proceeding relates to the same primary rights
12 as the first action did.

13 Here, claim 1360 asserts claims against GMAC in the
14 bankruptcy case based on the first Sweeting litigation. That
15 action was dismissed, on the merits, with prejudice as against
16 GMAC. As a result, under the doctrine of res judicata, claim
17 1360 is barred. Accordingly, the debtors have requested that
18 claim be disallowed and expunged.

19 THE COURT: Okay. Go on with your argument.

20 MS. RICHARDS: Okay. That brings us to the second
21 claim filed by Mr. Sweeting, claim 1360 (sic). That proof of
22 claim was also filed in the amount of 79,170,000, and asserts
23 claims that were brought by Mr. Sweeting in an action commenced
24 on September 21st, 2010, also in California Superior Court.
25 The debtors' objection has referred to that case as the second

1 Sweeting action.

2 Your Honor, the debtors have taken the position that
3 that action was also barred by res judicata, as a matter of the
4 court's dismissal of the first Sweeting action. That
5 determination is on appeal with the California appellate court.
6 Under Rooker-Feldman, this court is not permitted to review the
7 California court's determination regarding whether that action
8 is barred by res judicata.

9 However, putting aside the issue of claim preclusion,
10 or this court's jurisdiction to review the trial court's
11 determination that the action was barred by res judicata, the
12 issue of the merits of Mr. Sweeting's claims are before this
13 court today and are not addressed in his appeal before the
14 appellate court.

15 THE COURT: Say that again.

16 MS. RICHARDS: The issue that the appellate court is
17 ruling on is --

18 THE COURT: Just a --

19 MS. RICHARDS: -- whether the California trial court
20 erred in dismissing the second Sweeting action under res
21 judicata. If he wins at that appellate level, all that happens
22 is that he gets a chance to prove the merits of his claims.
23 That issue is already before the Court today. Mr. Sweeting, in
24 light of the debtors' objection, bears the burden to show the
25 merits of his claims by a preponderance of the evidence. He

1 has not carried that burden. His 2010 complaint asserts three
2 causes of action. The first is for defamation and tortious
3 interference with credit.

4 THE COURT: So was that asserted -- that's asserted in
5 the second Sweeting action in California; was that asserted in
6 the first Sweeting action?

7 MS. RICHARDS: It was asserted as part of his second
8 amended complaint which was filed while his appeal of the
9 dismissal of the first amended complaint was pending. The
10 debtors objected. The trial court held that objection in
11 abeyance pending a ruling by the appellate court on the
12 dismissal of the first complaint --

13 THE COURT: Okay.

14 MS. RICHARDS: -- first amended complaint. After that
15 appeal was decided in GMAC's favor, GMAC then sought
16 dismissal -- it filed a motion to strike the second amended
17 complaint, which was granted. So Mr. Sweeting did bring it
18 before the first trial court, but it was dismissed under res
19 judicata grounds, among others.

20 THE COURT: Let me just -- I want to be clear. So in
21 his second amended complaint in the first action, Mr. Sweeting
22 added a new cause of action for defamation and tortious
23 interference with credit, against GMAC?

24 MS. RICHARDS: That's correct, Your Honor.

25 THE COURT: And the trial court went forward and

1 sustained GMAC's demur to the second amended complaint in the
2 first action that asserted the tortious interference --
3 defamation and tortious interference claim.

4 MS. RICHARDS: That's correct, Your Honor.

5 THE COURT: And was that judgment appealed?

6 MS. RICHARDS: That judgment was not appealed.

7 THE COURT: And that, in your view, is final?

8 MS. RICHARDS: And that judgment is final.

9 THE COURT: Okay. And on what basis did the trial
10 court sustain the demur to the second amended complaint in the
11 first action?

12 MS. RICHARDS: The debtors pled two bases on which it
13 should be demurred.

14 THE COURT: Um-hum.

15 MS. RICHARDS: And the trial court didn't specify
16 which it was granting, so for purposes of California law, both
17 grounds are deemed to have been --

18 THE COURT: Okay.

19 MS. RICHARDS: -- relied on.

20 THE COURT: And the two grounds were what?

21 MS. RICHARDS: Res judicata and that Mr. Sweeting had
22 not sought the court's permission to amend his complaint before
23 doing it.

24 THE COURT: Okay. Go ahead.

25 MS. RICHARDS: I'm just going to address the merits

1 of --

2 THE COURT: Yeah.

3 MS. RICHARDS: -- Mr. Sweeting's claims for you. So
4 coming again, he asserted three causes of action in that second
5 complaint -- the first was initially asserted in the first
6 Sweeting complaint or the first Sweeting action; -- defamation
7 and tortious interference with credit. His allegations in
8 support of that point are that GMAC Mortgage wrongfully
9 reported that he owed sixteen million dollars, following the
10 foreclosure and trustee sale of his property.

11 THE COURT: How much? I thought it was sixteen
12 million or --

13 MS. RICHARDS: 16.2 million --

14 THE COURT: Yeah, okay.

15 MS. RICHARDS: -- dollars, I think is the amount in
16 his papers.

17 THE COURT: Right.

18 MS. RICHARDS: In support of that argument, Your
19 Honor, he submitted a single credit report. It was attached as
20 Exhibit 14 to his response. And I have copies -- additional
21 copies, if you'd like me to hand them up.

22 THE COURT: No, it's all right.

23 MS. RICHARDS: If you look at the credit report, it
24 doesn't say what he says it says. It says plainly that the
25 recent balance on the loan is zero dollars, as of September

1 28th. It is clear that GMAC Mortgage had charged off that
2 loan; they were not seeking to claim any funds from him on
3 account of the deficiency following the foreclosure sale. And
4 the sixteen million dollar amount --

5 THE COURT: In California, a mortgage is nonrecourse
6 on a deed of trust -- first mortgage -- purchase money mortgage
7 secured by a deed of trust is nonrecourse under California, is
8 that right?

9 MS. RICHARDS: That's our understanding, yes, Your
10 Honor.

11 So the sixteen million dollars, of which Mr. Sweeting
12 complains, is just a recital of the terms of the loan that it
13 had been charged off, and that's reflected on the credit report
14 that he attached. The current report is also nearly four years
15 old, so it doesn't support any claims that GMAC is continuing
16 any conduct going forward. Mr. Sweeting has not shown that
17 GMAC incorrectly reported anything, and so he hasn't shown any
18 damages arising from that either, much less seventy-nine
19 million dollars' worth of damages.

20 His other two claims in that complaint are both for
21 equitable relief. He seeks an accounting of the loan. But
22 again, there's no support for seventy-nine million dollars of
23 damages in connection with that request for relief.

24 And the third thing he requests is an injunction
25 preventing GMAC Mortgage from wrongfully submitting credit

1 reports on his behalf. Again, he has not shown that anything
2 was wrongfully reported, and he has not shown damages.

3 THE COURT: Well, is GMAC a creditor of Mr. Sweeting?
4 GMAC was servicing the loan. The loan was -- because the
5 property was foreclosed and sold. Is GMAC contending that Mr.
6 Sweeting owes GMAC any money?

7 MS. RICHARDS: It is not, Your Honor.

8 THE COURT: Okay.

9 MS. RICHARDS: For those reasons --

10 THE COURT: Let me ask you a couple of other
11 questions.

12 MS. RICHARDS: Yes.

13 THE COURT: You acknowledge in your papers that with
14 respect to the second Sweeting action, because of the
15 particulars of the California rule of res judicata, res
16 judicata wouldn't apply to the dismissal of the second Sweeting
17 action because there's still an appeal pending, right?

18 MS. RICHARDS: That's correct, Your Honor.

19 THE COURT: So the question I have is, particularly in
20 light of the second amended complaint in the first Sweeting
21 action, whether collateral estoppel applied. In other words,
22 if there were facts that are necessarily determined adverse to
23 Sweeting in the first action, such that collateral estoppel
24 would apply, and if the second Sweeting action depends on the
25 same facts, does collateral estoppel apply? Is there a

1 requirement that -- I mean, I understand for res judicata there
2 would be a requirement that the judgment be final, and it isn't
3 with respect to the second Sweeting action. But to the extent
4 that the second Sweeting action depends upon facts necessarily
5 determined adverse to Mr. Sweeting in the first Sweeting
6 action, there may be no -- I don't know; does collateral
7 estoppel apply -- a demur tests the sufficiency of the
8 complaint, and I guess the court doesn't make -- I don't know,
9 does the court make -- are there facts -- is there collateral
10 estoppel with respect to the first Sweeting action? I ask that
11 question.

12 MS. RICHARDS: I think there, arguably, is, but the
13 debtors have proceeded on the objection on the grounds we're
14 comfortable that Mr. Sweeting hasn't met the merits of his
15 claims --

16 THE COURT: Okay.

17 MS. RICHARDS: -- so we didn't address that point.

18 THE COURT: All right. Okay. Anything else you want
19 to add at this point?

20 MS. RICHARDS: Not at this point, Your Honor.

21 THE COURT: All right. Mr. Sweeting, I'll hear you
22 now.

23 MR. SWEETING: Oh, hi. Good morning, Your Honor.
24 Some of the facts are slightly distorted. In the first amended
25 complaint, there was no reference to defamation and accounting,

1 because the report of the sixteen million dollar debt was not
2 initially in the case; it occurred a year into the case, which
3 is now over five years old.

4 In the first amended complaint, GMAC committed fraud
5 in the court by stating they never owned the loan, and they
6 stated they never owned the deed, to Judge Wilkinson. But they
7 went into a different court for -- to Westminster court with a
8 deed for they did own the property. And then they filed a
9 sixteen million dollar debt on my credit report, which is still
10 on there today, that I owed them sixteen million dollars, on
11 top of the forty years of paying them on the same loan. So in
12 one court of law or another they have committed fraud.

13 THE COURT: Mr. --

14 MR. SWEETING: The entire loan contract was fraud from
15 day one.

16 THE COURT: You've tried to litigate that issue
17 multiple times, unsuccessfully, in the California state courts.
18 Do you agree with that?

19 MR. SWEETING: Yes, but if you go back to the second
20 amended complaint, GMAC was already out -- they were already
21 out of the case and on appeal before the second amended
22 complaint. They were given a courtesy copy because the other
23 defendants have accepted the second amended complaint in the
24 core grounds (ph.). GMAC was given a courtesy copy, as a
25 placeholder --

1 THE COURT: May I ask you a question?

2 MR. SWEETING: -- but --

3 THE COURT: Mr. Sweeting, stop for a second. My
4 understanding is on December 15th, 2009, you filed a second
5 amended complaint in the California trial court, naming GMAC as
6 a defendant. And you also alleged, in that second amended
7 complaint, a new cause of action for defamation and tortious
8 interference with credit, and you asserted that against GMAC,
9 is that correct?

10 MR. SWEETING: Yes.

11 THE COURT: And that's a claim that you then also
12 asserted in the second amend -- and the trial court sustained
13 GMAC's demur to the second amended complaint that included the
14 claim for defamation and tortious interference with credit, is
15 that correct?

16 MR. SWEETING: That's true, but GMAC was already in
17 the appellate court --

18 THE COURT: Well --

19 MR. SWEETING: -- on the first amended --

20 THE COURT: So you acknowledge that the trial court
21 sustained GMAC's demur to your second amended complaint that
22 included the claim for defamation and tortious interference,
23 which you asserted for the first time in the second amended
24 complaint. And the trial court, in that first action,
25 sustained that demur and dismissed that claim, correct?

1 MR. SWEETING: Yes.

2 THE COURT: All right. And that's a claim that you
3 pleaded again in the second amended complaint, correct? Not --
4 excuse me, that's a claim that you pleaded in the second
5 California action, correct?

6 MR. SWEETING: Yes, those two causes alone.

7 THE COURT: Right. So you raised it once and you
8 lost, and then you asserted that same claim in the second case,
9 that's correct?

10 MR. SWEETING: No.

11 THE COURT: What's not correct about it?

12 MR. SWEETING: GMAC was out -- was granted their
13 summary judgment motion on the first amended. They were not a
14 party to the second amended.

15 THE COURT: Well, you named them as a defendant on the
16 second amended complaint with respect to the defamation and
17 tortious interference claim. They demurred, and the trial
18 court sustained the demur and dismissed the second amended
19 complaint that included a claim against GMAC from defamation
20 and tortious interference, correct?

21 MR. SWEETING: Right, well, there was some confusion
22 on their end.

23 THE COURT: Well, there's no confusion in what I've
24 read. You asserted it, you asserted it against them, the trial
25 court sustained the demur and dismissed the second amended

1 complaint that included that new cause of action, correct?

2 MR. SWEETING: Yes.

3 THE COURT: All right. Go ahead with your argument.

4 MR. SWEETING: Well, the -- again, since GMAC was on
5 appeal on the first amended, they were given a copy of the
6 second amended as a courtesy; they didn't even need to answer
7 it. And that's why the second complaint was filed, to have
8 them answer the sixteen million dollar debt and how they
9 account for it, which they never have.

10 THE COURT: Well, they responded to the complaint by
11 filing a demur, which the court sustained and dismissed your
12 second amended complaint in the first action.

13 MR. SWEETING: Okay. Since then, a new judge has come
14 into the case, he has seen the fraud that GMAC committed in the
15 case. The Court of Appeals has now seen the fraud. And I'm
16 waiting for the ruling on that to be published so we can go
17 forward with that case. So I'm kind of stuck in limbo here.

18 Now, in the meantime, the second amended complaint on
19 the first case is still active.

20 THE COURT: It's not active against GMAC; the court
21 dismissed it.

22 MR. SWEETING: Well, they may come back and say there
23 was fraud. That is what I am looking, for the Court of Appeals
24 to say --

25 THE COURT: Mr. Sweeting --

1 MR. SWEETING: -- that there was fraud.

2 THE COURT: -- there's a final judgment as to GMAC in
3 the first case, final judgment, including with respect to the
4 claim for defamation and tortious interference.

5 But Ms. Richards, let me ask you a question. What's
6 the debtors' position with respect to lifting the stay to allow
7 for the completion of the appeal in the second action? I ask
8 for this reason. If I go ahead and sustain the debtors'
9 objection to both proofs of claim, and frankly, if the
10 appellate court -- which I gather it's fully briefed, is that
11 correct?

12 MS. RICHARDS: I believe it's fully briefed --

13 MR. SWEETING: Yes.

14 MS. RICHARDS: -- yes, Your Honor.

15 THE COURT: Okay. If the appellate court -- if the
16 stay is lifted, the appellate court goes ahead and reverses,
17 Mr. Sweeting, under 502(j), could seek to, essentially,
18 reassert a claim. I mean, it looks pretty final to me with
19 respect to GMAC, but that second case is in limbo. Why
20 shouldn't I lift the stay to permit the appeal in the second
21 case to be heard and decided?

22 MS. RICHARDS: Because --

23 MR. SWEETING: That's what I'm requesting, Your Honor.

24 THE COURT: Mr. Sweeting, don't interrupt.

25 Go ahead, Ms. Richards.

1 MS. RICHARDS: Your Honor, the appeal does not address
2 the merits of Mr. Sweeting's claim.

3 THE COURT: Well, look, if the court affirms, the
4 show's over, okay? But my concern is, is that there's a
5 pending appeal -- what I think about it doesn't make any
6 difference; it's for the California appellate court to decide
7 it. There doesn't appear to be anything left for the debtors
8 to do with respect to that appeal. It appears to be fully
9 briefed. I guess if there's an argument, the debtors will have
10 somebody argue, if they wish. Why shouldn't I lift the stay to
11 allow the appeal to run its course?

12 MS. RICHARDS: Your Honor, if the appeals court finds
13 in Mr. Sweeting's favor, all that will have happened is that
14 they will have said res judicata did not apply, Mr. Sweeting
15 gets to establish the merits of his claim, he gets to litigate
16 that. That proceeding is not pending. The question of the
17 merits of his claims are before you today. Mr. Sweeting filed
18 his claim, we've objected to it; the burden is on him, by a
19 preponderance of the evidence, to show the merits of his
20 claims.

21 THE COURT: Well, I --

22 (Pause)

23 THE COURT: So if -- the debtors succeeded, pre-
24 petition, in having the demur to the complaint sustained, and
25 the complaint was dismissed, and that's on appeal. If the

1 appellate court were to reverse, the issue then would be
2 whether the complaint states a claim and whether Mr. Sweeting
3 could prove it.

4 If I -- even if I sustain your objection and expunge
5 both proofs of claim, if the appellate court were to reverse,
6 what Mr. Sweeting's chances of success would be, I'm not sure,
7 but 502(j) provides that a claim that has been allowed or
8 disallowed may be reconsidered for cause. A reconsidered claim
9 may be allowed or disallowed according to the equities of the
10 case.

11 So the issue would become -- I mean, I might well
12 conclude that what he submitted in support of the proof of
13 claim -- he attached a copy of the complaint, and you rely on
14 the fact that -- that complaint essentially is the same thing
15 all over again; it's been dismissed again. I'm not going to
16 get into whether I think there's any merit to his appellate
17 argument or not, after the first case was dismissed and became
18 final; that's for the California court to decide.

19 Go ahead, anything else you want to say, Ms. Richards?

20 MS. RICHARDS: I would -- just responding to that last
21 point you raised. If this Court disallows and expunges claim
22 1361, on the grounds of res judicata, then if Mr. Sweeting were
23 to succeed at appeal, he would then have the opportunity to
24 prove his claim. And the question becomes, where does that
25 proceeding happen? Does it happen out in California state

1 court, where no proceedings have happened to date? Or does it
2 happen before this court, where he has jurisdiction and where
3 he's filed -- where this court has jurisdiction if he filed a
4 claim.

5 THE COURT: Well, the only thing I'm considering is
6 whether to lift the stay to permit the appeal -- pending
7 appeal, fully briefed, to be decided. I'm not saying that I
8 would lift the stay to permit an action to go forward in the
9 trial court when nothing's happened on the merits, and it
10 wouldn't be likely to be resolved any time soon.

11 MS. RICHARDS: Your Honor --

12 THE COURT: What's happened with respect to the other
13 defendants in the state court?

14 MS. RICHARDS: In the first Sweeting action?

15 THE COURT: Well, first, second; take your pick.

16 MS. RICHARDS: There are no other -- GMAC was the only
17 defendant --

18 THE COURT: In the second.

19 MS. RICHARDS: -- in the second Sweeting action.

20 THE COURT: Okay. What's happening in the first --

21 MS. RICHARDS: So there's no one else.

22 THE COURT: -- Sweeting action?

23 MS. RICHARDS: As far as I know, it's still pending,
24 but I don't know the exact status. I don't know if my
25 colleague Mr. Dykstra --

1 THE COURT: Can you --

2 MS. RICHARDS: -- can provide an update to the Court
3 on that.

4 MR. DYKSTRA: Certainly.

5 THE COURT: Sure, thank you.

6 MR. SWEETING: Your Honor, if I may?

7 THE COURT: No, not yet. I'll give you another
8 chance, Mr. Sweeting. Hold on.

9 MR. DYKSTRA: Your Honor, Jonathan Dykstra of Severson
10 & Werson on behalf of the debtor.

11 Briefly, what's generally happening in this case is
12 Mr. Sweeting has filed against or brought in approximately
13 seven or eight different defendants. Most of them are out all
14 the way through the appeal process, with the exception of the
15 second GMAC action. There are two remaining active defendants,
16 MERS and Chicago Title company. That's still pending. MSJs
17 are pending and things like that. The reason that they're
18 still in is because both of those entities were doughed (ph.)
19 in much later, so it didn't have a chance to attack this
20 earlier.

21 THE COURT: Thank you.

22 MR. DYKSTRA: Thank you.

23 THE COURT: Mr. Sweeting, go ahead. I'll hear from
24 you briefly.

25 MR. SWEETING: Yes, Your Honor. Recently, Chicago

1 Title moved the court to request mediation, so that is being
2 set up now for mediation in Chicago Title and MERS defendants.

3 The other defendants have fled, or default judgments
4 have been filed against all -- in this case, every code in the
5 financial code was violated in this loan contract. So the
6 defendants have fled or stalled. In the case of Chicago Title,
7 they've stalled for four years in providing discovery, and
8 finally the court ordered them --

9 THE COURT: Do you have a lawyer in the first Sweeting
10 action?

11 MR. SWEETING: Do I --

12 THE COURT: Are you represented by counsel?

13 MR. SWEETING: Originally, yes.

14 THE COURT: No, I'm talking about now, not originally.

15 MR. SWEETING: Okay, I didn't hear the question.

16 THE COURT: It's not -- okay, Mr. Sweeting, are you
17 represented by counsel in the pending action that you brought
18 that's been referred to as the first Sweeting action; are you
19 represented by counsel in that case?

20 MR. SWEETING: No, Your Honor, I've been financially
21 devastated by these actions --

22 THE COURT: Okay.

23 MR. SWEETING: -- and lost my ability --

24 THE COURT: All right.

25 MR. SWEETING: -- on account of the --

1 THE COURT: Who are the defendants as to whom you've
2 gotten the default judgment?

3 MR. SWEETING: The appraiser -- GMC appraisers, the
4 owner of the appraiser company, Jason Kishaba, has defaulted.
5 The original defendant, International Mortgage, International
6 Escrow, they have fled. Their license had been revoked prior
7 to even starting my loan. So they have -- they stole the loan
8 proceeds, they forged some documents. No copy of the loan
9 contract was ever handed over, no right to cancel. The loan
10 proceeds were stolen. The first payment due back to Fremont
11 was stolen. Fremont was ordered closed -- ordered their
12 mortgage business closed down by the government for acts they
13 had done. And Fremont failed to post my payments before GMAC
14 bought -- GMAC bought all the Fremont loans -- well, I don't
15 know, mortgage sale price, because Fremont was ordered out of
16 the mortgage business. So that's how GMAC ended up with it.

17 So the second day they owned my loan, they sent a
18 deficiency notice that I owed them eighty thousand dollars,
19 because Fremont had failed to post my payments. And GMAC went
20 directly into foreclosure, because the property was appraised
21 at a million dollars. So GMAC's intention was to take all
22 the -- then the foreclosed mortgages that Fremont had. Once
23 GMAC saw how the -- the fact that the entire loan contract was
24 illegal, it's been a process of cover-ups ever since.

25 THE COURT: All right. Anything else you want to say

1 about your -- this pending motion to expunge your claim?

2 MR. SWEETING: Yes. I'm very confident that the Court
3 of Appeals will reverse. They were shocked at what GMAC has
4 done. They were --

5 THE COURT: How were they shocked? Has there been an
6 argument in the appeal?

7 MR. SWEETING: Yeah.

8 THE COURT: When was the argument?

9 MR. SWEETING: Approximately a year ago.

10 THE COURT: Mr. Dykstra, was --

11 MR. DYKSTRA: It has been argued, Your Honor.

12 THE COURT: Were you there?

13 MR. DYKSTRA: I was not.

14 THE COURT: All right. I'm going to take the matter
15 under submission.

16 MS. RICHARDS: Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Sweeting.

18 MR. SWEETING: All right. Thank you, Your Honor.

19 THE COURT: All right. You can disconnect Mr.
20 Sweeting. Is there anybody else on? Never mind, that's fine.
21 Yeah, fine.

22 Go ahead, Ms. Richards.

23 MS. RICHARDS: Your Honor, that brings us to the last
24 section of the agenda, which relates to the debtors' omnibus
25 claims objections. There's one pending objection to the

1 debtors' first omnibus objection; that's been adjourned. There
2 was one pending objection to the debtor's twenty-third omnibus
3 objection; that's been resolved. And the final omnibus
4 objection is the debtors' thirty-second omnibus claims
5 objection, which relates to claims that are duplicative of
6 indenture trustee claims. There were no responses or
7 objections filed to that claim.

8 THE COURT: All right. The Court has reviewed --
9 anybody wish to be heard with respect to the debtors' thirty-
10 second omnibus objection to claims? It's at ECF 4903.

11 All right. Hearing none, no response was filed. The
12 motion is supported by the declaration of Deanna Horst, the
13 senior director of claims management at Residential Capital,
14 LLC and its affiliates. Through the motion, the debtor seeks
15 to disallow and expunge eleven claims, attached as Exhibit A to
16 their proposed order. The declaration established that the
17 claims are duplicative of a master claim filed by Wilmington
18 Trust, N.A. as indenture trustee, on its own behalf and on
19 behalf of the holders of certain notes. The motion does not
20 affect the claim filed by Wilmington Trust. The Court has
21 reviewed papers. The objection is well taken and is sustained.

22 MS. RICHARDS: Thank you, Your Honor.

23 THE COURT: Okay?

24 MS. RICHARDS: That's all we have for you today.

25 THE COURT: All right. Thank you very much.

RESIDENTIAL CAPITAL, LLC, ET AL.

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MS. RICHARDS: Thank you.

(Whereupon these proceedings were concluded at 10:44 AM)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

SHARONA SHAPIRO
AAERT Certified Electronic Transcriber CET**D-492
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